

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**THOMAS G. BROWN and
ELLA H. BROWN,**

Plaintiffs,

v.

RICHARD CROW, et al.,

Defendants.

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Civil Action No. 3:21-CV-02998-L-BT

ORDER

On December 22, 2022, United States Magistrate Judge Rebecca Rutherford entered the Findings, Conclusions, and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 196), recommending that the court grant Defendant Citigroup, Inc.’s Motion to Dismiss Plaintiffs’ Second Amended Complaint (“Motion”) (Doc. 171), and dismiss with prejudice all claims brought by Plaintiffs Thomas and Edna Brown (“Plaintiffs”) against Citigroup. The Report recommended dismissal because Plaintiffs fail to sufficiently allege facts to support any plausible action against Citigroup or, as Plaintiffs argue, Ameritrust as Citigroup’s successor in interest. Doc. 196 at 5-6. Further, Plaintiffs failed to allege any facts showing that Citigroup acted under color of state law to deprive them of any constitutional rights. *Id.* at 6. Plaintiffs’ bare allegations of conspiracy between local governments and private actors is insufficient to state a claim for constitutional deprivation, and as such, Plaintiffs fail to state a claim upon which relief can be granted. *Id.* at 7. Plaintiffs did not file objections to the Report, and the time to do so has passed.

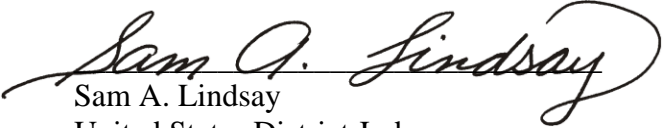
Having reviewed the pleadings, file, record in this case, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Plaintiffs have not alleged sufficient facts to allow the court to reasonably infer that

Citigroup violated their constitutional rights. Accordingly, the court **grants** the Motion to Dismiss, and **dismisses with prejudice** Plaintiffs' claims against Defendant Citigroup, Inc.

Finally, as the court has previously addressed in numerous orders in this case, the court determines that dismissal without leave to amend is appropriate. The provision of Rule 15(a)(2) of the Federal Rules of Civil Procedure that states “[t]he court should freely give leave when justice so requires” is not without limitation. The decision to allow amendment of a party’s pleadings is within the sound discretion of the district court. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Norman v. Apache Corp.*, 19 F.3d 1017, 1021 (5th Cir. 1994) (citation omitted). In determining whether to allow an amendment of the pleadings, a court considers the following: “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.” *Foman*, 371 U.S. at 182; *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 566 (5th Cir. 2003) (citation omitted).

The court has already granted Plaintiffs leave to amend their claims twice (Docs. 100, 161), and warned them that no further amendments would be allowed. Doc. 100 at 2. Plaintiffs have had two opportunities to bring sufficient factual allegations to state a claim against Defendant Citigroup and have failed to do so. Further, the court agrees with the Report that Plaintiffs have stated their best case. *Id.* Further opportunities to amend their claims as to Citigroup would be an inefficient use of the parties’ and the court’s resources and cause unnecessary and undue delay. Finally, Plaintiffs failed to object to the Report’s recommendation of dismissal, despite their earlier objections to other reports from the magistrate judge similarly recommending dismissal. Plaintiffs have not sought leave to amend, and the court will not *sua sponte* grant it here. For these reasons, the court will not allow Plaintiffs a further opportunity to amend their pleadings regarding their claims against Citigroup.

It is so ordered this 18th day of January, 2023.


Sam A. Lindsay
United States District Judge